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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fourth session

PROVISIONAL SUMMARY RECORD OF THE 1017th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 2 March 1994, at 3 p.m.

Chairman: Mr. GARVALOV

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The meeting was called to order at 3.15 p.m.

SOLEMN DECLARATION BY A NEWLY ELECTED MEMBER OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE (agenda item 2)

1. MR. AHMADU made a solemn declaration under rule 14 of the rules of procedure.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Twelfth periodic report of Tunisia (CERD/C/226/Add.10) (continued)

2. At the invitation of the Chairman, Mr. Ennaceur, Mr. Hatira and Mr. Ben Malek (Tunisia) took places at the Committee table.

3. Mr. ENNACEUR (Tunisia), replying to comments and suggestions by the members of the Committee, thanked them for their interest in the developments in his country and assured them that further replies would be given in the next periodic report. With regard to the population of Tunisia, he specified that 5,000 Tunisians were non-Muslims, of whom 3,000 were Jews and the others mainly Christians. There were also some 25,000 foreigners working in Tunisia, largely on account of the legislation encouraging foreign investment, especially in industrial development. In addition, Tunisia received some 4 million tourists annually from all over the world.

4. As further evidence of his country's openness to the outside world, he informed the Committee that the programmes of the Italian television station RAI had been received directly in Tunisia for the previous 30 years and those of the French channel France 2 for the previous 15 years. He reiterated his assertion that there was no significant problem of racial discrimination in Tunisia which seemed to have caused some surprise among members of the Committee. There was no denying that there were some human rights problems, which the Government was addressing, but the absence of the specific problem of racial discrimination was a fact and it was a legacy of Tunisia's long tradition of openness.

5. The information contained in the report was to be seen against a background of far-reaching reform in Tunisia since the change in the Presidency in 1987, which had marked a deliberate break with the past and a commitment to a new vision of society. The new President's will to build national consensus around a blueprint for society with the participation of all the political and social forces in the country had led to the signing of the National Covenant. In response to a number of questions about the Covenant, he said that it was not a law or a document promulgated by the Government, but a text that had been negotiated, after a year-long debate, by political parties of all tendencies and social and professional organizations. One of its signatories had been a leader of the Islamic movement al-Nahda. The negotiated text was intended as a consensus model of society enshrining common values, options, guidelines and the attributes of Tunisian identity. Although it did not have force of law in the

strict sense, it could be described as a code of honour or a social contract binding upon all political, economic and social forces. It also represented a consensus on future aims and a commitment to progress and to an open, tolerant, democratic and pluralistic society, as well as to the preservation of social and political attainments. The latter point was worth emphasizing, since such attainments, especially the Code of Personal Status, which, for instance, prohibited polygamy, had been threatened as a result of the growth of the Islamic movement and the unrest of 1987. Other such attainments concerned the empowerment of women, who enjoyed all civil and political rights, the law on adoption and labour rights. Among the purposes of the National Covenant was the preservation and consolidation of such rights.

6. With regard to the new structures introduced since 1987, Mr. Wolfrum had said that the description of those structures sounded like a plan for a building that had not yet been constructed. However, the model for society was not merely a plan or an intention, since construction was in progress. The process could not be expected to be completed in so short a time, but the structures were now in place.

7. The members of the Committee had shown particular interest in two of those structures - the Higher Committee of Human Rights and Fundamental Freedoms and the post of administrative mediator. The Higher Committee of Human Rights and Fundamental Freedoms had been established in 1991 as a result of a period of unrest in 1989-1990 and complaints of human rights violations following the Government's refusal to allow the Islamic al-Nahda movement to form a political party. The Higher Committee was an autonomous body. Two thirds of its members were independent persons and one third representatives of government departments concerned with human rights. Complaints could be filed directly by individuals or non-governmental organizations. It had an investigative role and could also make proposals with a view to improving legislation and practice to ensure their conformity with international instruments. It issued a public annual report on the human rights situation, which covered both shortfalls and achievements. Following the Vienna World Conference on Human Rights, a meeting of national human rights institutions had been organized at the instigation of the Higher Committee of Human Rights and Fundamental Freedoms.

8. The role of the administrative mediator, who was admittedly not exactly an ombudsman, was to receive individual petitions from any source concerning alleged infringements of rights by administrative departments or officials. His status was such that he could act at all levels. The procedure followed was one of discretionary remedy, involving a petition to the official or department concerned. He was authorized to make proposals to the President of the Republic.

9. Several questions had been asked about the Berbers in Tunisia. His impression was that there was some misapprehension about the situation as compared with that in neighbouring countries. In Tunisia, there were no particular claims forthcoming from the Berber minority, which was particularly well integrated into Tunisian society. Likewise, there were no nomads in Tunisia, unlike the neighbouring countries. Whereas in 1956 two thirds of the

population had been rural and one third urban, the situation was now the reverse.

10. Several questions had been raised about the right of association and especially the amended Associations Act, as supplemented by Organic Law No. 92-25 of 1992, prohibiting the simultaneous holding of a post of responsibility in a political party and in an association. He specified that the prohibition concerned only associations of a general nature and was intended to prevent such associations from being used for political purposes. It did not apply to special-interest associations such as charities, sports associations, clubs and the like. He denied that the rule was contrary to freedom of association and cited the example of the International Commission of Jurists, whose statutes contained a similar ban.

11. Regarding the supremacy of treaties over domestic legislation and whether such supremacy was automatic or whether the parties concerned were entitled to invoke treaties before the competent courts, he said that, in civil proceedings, it was for the interested party to invoke the convention concerned to the extent that such a reference could support the complainant's case before the courts, whereas in penal procedure, it was for the public prosecutor to invoke such and such an international convention, which had force of law and indeed took precedence over domestic law in Tunisia.

12. On the subject of Jews in Tunisia and the reasons for their departure, he said that Jewish immigration had dated from the Spanish Inquisition. Many had stayed and become integrated into Tunisian society. There were a number of reasons for their departure, mostly to France. It should be pointed out that some of them had French or dual Tunisian-French nationality. Their departure as from the 1960s had been prompted by two events. One was the policy of collectivization and socialization of means of production introduced in the 1960s. The policy had of course applied to all Tunisians and had in no way been discriminatory, but had not been readily accepted by the many Jews engaged in commercial activities. Secondly, events in the Middle East in 1967 had created tension in the region, causing many Jews to leave. There had not been any persecution or legislation directed against them.

13. As to immigration to Tunisia in general, most immigrants were workers from other Maghreb countries, especially Morocco and, to some extent, Algeria. There were also a number of Europeans working for foreign companies, as he had specified earlier. Tunisia, which had ratified the ILO Conventions concerning, inter alia, equal treatment of nationals and non-nationals in respect of employment and occupation, equal remuneration and social security, protected the equal rights of foreign workers, including trade union rights.

14. On the subject of the reform of the justice system, the reason the post of Procurator-General of the Republic had been abolished was that it had been created under emergency legislation. It had been connected with the State Security Court, which had tried cases of political opposition. Since it had been linked to political trials, one of the first measures to be taken by the new

President in 1987 had been to abolish both the Court and the post of Procurator-General.

15. One speaker had asked why Tunisia had not made the declaration under article 14 of the Convention. He had taken note of that comment and expressed the hope that Tunisia would make the declaration in due course, but pointed out that his country had already made similar declarations under the relevant articles of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, whose requirements were more stringent than those of article 14 of the Convention. He reiterated his assertion that racial discrimination did not seem to be a serious problem in Tunisia.

16. Referring to the status of women in Tunisia and their participation in political life, he said that polygamy had long since been abolished and that women enjoyed equal civil and political rights with men. Currently, women accounted for slightly more than 20 per cent of the active population. They occupied somewhat less than 5 per cent of the seats in Parliament; that figure might well increase as a result of the forthcoming multi-party elections to be held in accordance with the new electoral code agreed upon by the partners to the National Covenant. Fourteen per cent of Tunisia's municipal councillors and 11 per cent of the members of the Economic and Social Council were women. The Minister for Family and Women's Affairs was a woman, as were the presidential adviser on women's affairs and a number of counsellors in the main ministerial offices.

17. Provision for the mandatory referral of issues involving major changes in the institutions and structures of the State to the electorate for direct decision had been written into the Tunisian Constitution some 20 years previously in connection with a never implemented proposal, for the merging of Tunisia and Libya. The referendary procedure was definitely not applicable in the case of international conventions on human rights, which were ratified by Parliament and entered into force upon ratification.

18. Several members of the Committee had stressed the importance of article 4 of the Convention and asked about its implementation in Tunisia. Paragraphs 57 et seq. of the report on penalties provided in the Press Code for incitement to racial hatred, offences against religion and defamation committed against persons of a particular race or religion, as well as the Act of 22 November 1993 on the punishment of incitement to racial or religious fanaticism, provided answers to that question, but naturally did not preclude further steps to adapt Tunisia's criminal law to the provisions of article 4.

19. Mr. SHERIFIS, welcoming the report and the replies to the members' questions, noted with satisfaction the statement that there was no problem of racial discrimination in Tunisia. He nevertheless pointed out that States parties had to fulfil their obligations under the Convention, particularly those embodied in article 4, whether or not such discrimination actually existed.

20. With regard to declarations under article 14, he said that it was with diffidence as the national of a State party which had itself only recently made such a declaration, becoming the nineteenth to do so, that he urged Tunisia to follow suit. Surely the argument that comparable declarations had already been made under other international instruments relating to human rights did not excuse Tunisia's omission in the present instance, but militated in favour of remedying that omission without further delay.

21. Mr. VALENCIA RODRIGUEZ requested additional clarifications concerning the causes and consequences of the recent change in the urban-rural distribution of Tunisia's population.

22. Mr. YUTZIS said that he was still not sure about the significance of the statement in paragraph 149 of the report that the new law on associations prohibited the holding of responsibilities within organizations of a general nature in conjunction with responsibilities in the central management of any political party. Mr. Ennaceur's reference to the International Commission of Jurists had not enlightened him and the information provided in paragraph 150 of the report on the action by the Tunisian League for Human Rights suggested that the new law was at least to some extent restrictive. What exactly was meant by "organizations of a general nature"? As a purely hypothetical question, he asked whether the Catholic Church was deemed to be such an organization and, if so, whether a person holding political responsibilities would be barred from assuming responsibilities within the Church's lay structures.

23. Mr. DIACONU said that, thanks to the report and the replies to their questions, the members of the Committee now had a much clearer picture of a society in transition and, under favourable auspices, well on the road to further progress. It was to be hoped that the Tunisian authorities would take account of the Committee's views in trying to ensure that domestic institutions and human rights standards matched the provisions of the international instruments to which Tunisia was a party. The fulfilment of the obligations contained in article 4 of the Convention was an especially important matter, as was the smooth functioning of national bodies set up to protect and promote human rights.

24. Mr. de GOUTTES, joining in the expressions of satisfaction with the report and the replies to questions, asked whether the phenomenon of mass tourism in Tunisia involved behavioural excesses and an abuse of good manners creating a negative culture shock that could lead to misunderstanding and even exasperation on the part of the local population. How did the Tunisian authorities view that matter?

25. The CHAIRMAN, speaking as a member of the Committee, said that it was the Committee's duty to persist in seeking justification for claims that racial discrimination did not exist, even when, as in the present case, such claims certainly appeared to be valid. He joined Mr. Sherifis and others in stressing that States parties must meet their obligations under the Convention, especially its article 4. Racial discrimination, like the influenza virus, was capable of mutation and was potentially present everywhere; vigilance must not be relaxed

for a single instant. He trusted that the Tunisian delegation would take the Committee's comments in that spirit.

26. Mr. SHAHI said that the general homogeneity of the Tunisian population was itself conducive to the absence of racial discrimination. Credit must also be given where credit was due and he considered that the Committee might be in a position to take the rare step of giving a State party a clean bill of health. It was to be hoped that the present state of affairs would continue to exist.

27. Mr. WOLFRUM said that, on the basis of the evidence, he, too, was generally satisfied with the situation in Tunisia. As other members of the Committee had said, however, obligations under the Convention, and especially its article 4, must be complied with whether or not racial discrimination actually existed. Precautionary measures even when a danger was not perceived to exist were preferable to wisdom after the event. Moreover, the report and oral replies had been somewhat weak with regard to the activities and actual achievements of national institutions, set up to protect and promote human rights, including the office of the administrative mediator (ombudsman). Implementation, as well as structures and intentions, must be reported on. In that respect, Tunisia's performance under article 9 of the Convention was a little disappointing.

28. Mr. ABOUL-NASR, supported by Mr. BANTON, drew the attention of the Tunisian delegation to the Committee's General Recommendation XV (42) on article 4 of the Convention, adopted at its 981st meeting on 17 March 1993 and contained in its report to the General Assembly (A/48/18).

29. Mr. ENNACEUR (Tunisia) said that special note had been taken of the importance attached to preventive measures, even when the dangers that were the Committee's subject of concern did not exist.

30. He pointed out to Mr. Valencia Rodriguez that the rural exodus had begun with the policy decision, taken shortly after independence, to make industry the motor of the country's development. Consequently, the agricultural sector in Tunisia, which had long been the granary of northern Africa, had slipped from a position of surplus into one of deficit. Rural decline and the absence of inadequacy of services had exacerbated the trend, with very serious economic and social consequences. Steps were now being taken to redress the situation, but the task was not an easy one.

31. Replying to Mr. Yutzis' question, he said that the Catholic Church was not an "organization of a general nature"; the Christian religion was organized in accordance with an international agreement concluded between Tunisia and the Holy See. He also described the historical background to the law on incompatibility between office in a political party and responsibilities within organizations of a general nature. Its basic objective was to prevent such associations from being abused for political ends, as had unfortunately been the case in the past.

32. He appreciated Mr. Diaconu's favourable comments and had taken note of his observations.

33. With regard to Mr. de Gouttes' question, he said that, some 20 years previously, as a regional governor, he himself had had occasion to draw the attention of tourist agencies to cases of behaviour by their clients which the local population had found distressingly immodest. But he did not believe matters to be too bad at the present time. Tourism was an important component of Tunisia's economy and figured prominently in its balance of payments. Through mutual information on customs, behaviour and habits, the worst of the culture shock that tourism could cause might be avoided.

34. He was particularly appreciative of Mr. Shahi's commendation and had taken note of the comment by Mr. Aboul-Nasr and Mr. Banton, as well as Mr. Wolfrum's request for more detailed information on any action taken by human rights bodies and the ombudsman.

35. The CHAIRMAN thanked the Tunisian delegation for its informative answers to the questions asked, and said he was sure that its members would return home in full awareness of the Committee's desire for continuing cooperation on the same basis.

36. Mr. Ennaceur, Mr. Hatira and Mr. Ben Malek (Tunisia) withdrew.

ELECTION OF OFFICERS (agenda item 3) (continued)

37. The CHAIRMAN invited nominations for the post of Vice-Chairman of the Committee.

38. Mr. ABOUL-NASR proposed Mr. Ahmadu.

39. Mr. Ahmadu was elected Vice-Chairman by acclamation.

ORGANIZATION OF WORK

40. The CHAIRMAN suggested that, since not all members could be present at the meeting on Friday, 11 March 1994, the question of the Committee's mission to the former Yugoslavia should instead be discussed on the morning of Monday, 7 March 1994. In view of the sensitive nature of that mission, it had been the Bureau's view that the Committee should consider it in a closed meeting.

41. In reply to a suggestion by Mr. ABOUL-NASR, he confirmed that a letter received from the former Yugoslavia seeking to impose certain conditions on the mission would be discussed at that meeting.

42. The Committee had received written requests from four States parties that the consideration of their reports should be postponed. Canada, Nicaragua and Sri Lanka had asked for postponement until the Committee's forthcoming session in August 1994 and Tanzania had asked for postponement sine die. The Bureau

proposed that the Committee should grant those requests and should inform the four States parties accordingly.

43. Mr. ABOUL-NASR said he did not think that Tanzania's request should be taken to mean that it was seeking a postponement sine die. In fact, that country had simply asked for a postponement "to a later date". The Committee should follow the same procedure as for the other three requests and contact the Tanzanian mission in Geneva to say that the Committee looked forward to receiving its report as soon as possible.

44. The CHAIRMAN said that he endorsed that suggestion. Speaking in his capacity as Country Rapporteur for Tanzania, he noted that that country had not reported since 1987 and would no doubt have a great deal of new information to provide about the changes that had taken place in the interim. He understood that the Tanzanian mission in Geneva, which had already prepared an excellent report for the Human Rights Committee, had sufficient qualified personnel to draft a report and submit it by the required deadline.

45. Mr. BANTON suggested that the Secretary should be asked to report to the Committee on his conversation with the Tanzanian mission on the subject. As he understood it, the Committee would be following past practice in making it clear to the State party that any requests for postponement should set a specific date for the submission of the report concerned. Indefinite postponement was not acceptable.

46. The CHAIRMAN noted that one of the items to be discussed by the Bureau the following day was the issue of failure by certain States to supply additional information that had been requested by the Committee.

47. Mr. WOLFRUM suggested that the Bureau should also consider the question whether there were any other States, such as Israel, which should be asked for additional information.

48. Mr. YUTZIS said that he supported that suggestion. He believed that time should also be found to assess the general situation with regard to the submission of reports. He pointed out that some countries which had requested postponement had in fact had ample time to prepare and submit their reports in accordance with the Committee's guidelines.

49. Mr. BANTON said that an additional agenda item on the consideration of reports that were seriously overdue would take care of that point.

50. Mr. SHAHI said that he would like the Committee to discuss the question of draft general recommendations, with particular reference to the applicability of article 5 of the Convention to foreigners in general and migrant workers in particular.

51. Mr. WOLFRUM said he agreed that the Committee should find time to discuss and adopt any draft recommendations which were still pending.

52. Mr. BANTON said it was the Bureau's view that the Committee should look at the draft recommendations as a matter of urgency and decide whether they could adopt them as they stood or whether a working group should be appointed to review them. If it was decided to set up a working group, the Bureau would need to know which members of the Committee would like to serve on it.
53. Mrs. SADIQ ALI suggested that the Committee might also consider the issue of reservations to human rights treaties and what action the Committee might take in that regard.
54. Mr. ABOUL-NASR said it would be preferable for the Committee to have a brief exchange of views on the draft recommendations before setting up any working group. Once consensus had been reached, the task of finalizing the texts could then be handed over to a working group.
55. Mr. WOLFRUM, supported by Mr. de GOUTTES, said that he would strongly advise against setting up any working group before the Committee had had an opportunity to discuss all the draft recommendations; otherwise, there was a danger that the group might produce a text which did not properly reflect the members' views.
56. Mr. BANTON drew attention to a working paper he had circulated to the members of the Committee containing a list of suggested additional issues for discussion under agenda items 5 (Action by the General Assembly at its forty-eighth session), 6 (Submission of reports by States parties under article 9, paragraph 1, of the Convention), 8 (Prevention of racial discrimination, including early warning and urgent procedures) and 11 (Third Decade to Combat Racism and Racial Discrimination).
57. Mr. RECHETOV inquired about the status of the working paper that Mr. Banton had introduced. If it were intended as a supplement to the agenda, why had it not been discussed and adopted as such?
58. The CHAIRMAN assured him that the working paper was not intended to replace or detract from the agenda that had been adopted. It was more like an explanatory note reminding members of certain pending issues, some with relatively low priority. It was up to the Committee to decide whether and when they should be discussed.
59. Mr. YUTZIS, referring to the appointment of Country Rapporteurs, a practice that had proved its usefulness over a period of several years, expressed surprise that, in the case of France, another member of the Committee had submitted his own set of questions to the delegation prior to the discussion and without consulting the Country Rapporteur. Such action tended to undermine the status of the Country Rapporteur and might also prove confusing for the delegation concerned.
60. The CHAIRMAN said that he made a point of giving the floor first to the Country Rapporteur, but that, thereafter, all members were equally entitled to

speak. His personal view, however, was that the status of the Country Rapporteur should not be undermined.

61. Mr. RECHETOV said that it was sometimes the way in which questions were asked, with a certain lack of restraint, that seemed to undermine the Country Rapporteur's status. A happy medium had to be found whereby the established procedure was respected, but the Country Rapporteur was able to draw on the special knowledge of other members of the Committee.

62. Mr. de GOUTTES said that the problem was simply one of coordination. It could easily be solved if individual members communicated their questions in advance to the Country Rapporteur.

63. It was more important, in his view, to deal with the complaint that delegations were given insufficient time to prepare coherent replies to the questions asked. He suggested that the Country Rapporteur should get in touch with the delegation a day or two prior to its appearance before the Committee to communicate the thrust of the questions likely to be raised.

64. Mr. FERRERO COSTA expressed the view that the Committee's work had benefited greatly from the Country Rapporteur system. However, there should be no question of restricting the freedom of other members to make their own contribution to the discussion. He thought that coordination might be enhanced if the channels of communication for those contributions - for example, the Chairman, the Secretary or the Country Rapporteur - were to be clarified.

65. He had reservations about the wisdom of informing delegations in advance of the questions likely to be raised, since that might make the debate less spontaneous. On the other hand, he saw the need for a more coherent and balanced response on the part of the Committee to individual country reports. The solution, in his view, lay in the organization of pre-sessional meetings.

66. Mr. SHERIFIS said that he was not inclined to view the Country Rapporteur system as something sacrosanct. It had been introduced as a way of saving time, but had patently failed to do so, since the members of the Committee still invariably took the floor one after the other to supplement the Country Rapporteur's lengthy statement.

The meeting rose at 6.05 p.m.